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**Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991**

**Financing of the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994**

# Conditions of service for the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

**Note by the Secretary-General**

## I. Introduction

1. The present report is submitted to the General Assembly to draw its attention to a lacuna in the conditions of service for the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. The report also contains a proposal for formal consideration and approval by the General Assembly to address that omission.

## II. Adoption of the conditions of service for the judges of the International Tribunals

2. By its resolution 827 (1993) of 25 May 1993, the Security Council decided to establish the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and adopted its statute. Article 13, paragraph 4, of the statute of the International Tribunal for the Former Yugoslavia provides that the terms and conditions of service shall be those of the judges of the International Court of Justice. By its resolution 955 (1994) of 8 November 1994, the Security Council decided to establish the International

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Criminal Tribunal for Rwanda and adopted its statute. Article 12, paragraph 5, of the statute of the International Criminal Tribunal for Rwanda provides that the terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia.

3. By its resolution 40/257 C of 18 December 1985, the General Assembly approved the recommendation of the Advisory Committee on Administrative and Budgetary Questions to establish, in addition to the existing pension scheme, a death-benefit scheme for members of the International Court of Justice. Under the provisions adopted by the General Assembly, survivors of members of the International Court of Justice who die while in office are compensated in the form of a lump-sum payment equivalent to one month of base salary for each year of service, subject to a minimum of three months and a maximum of nine months of salary. This lump-sum benefit is distinct from the applicable survivors' pension benefits.

4. In his report to the General Assembly at its forty-eighth session on the conditions of service and allowances for members of the International Tribunal for the Former Yugoslavia (A/C.5/48/36), the Secretary-General proposed a similar survivors' lump-sum benefit for the judges of the International Tribunal for the Former Yugoslavia. Having considered the report of the Secretary-General, however, the Advisory Committee on Administrative and Budgetary Questions deferred action on the conditions of service of the Tribunal's judges pending further experience with regard to the precise nature of the requirements of the Tribunal and the work of the judges (see A/48/915, paras. 4-9 and 12).

5. Upon the request of the General Assembly in its resolution 48/251 of 14 April 1994, the Secretary-General presented a further report on the conditions of service of the judges to the General Assembly at its forty-ninth session (A/C.5/49/11), in which he reiterated the proposals contained in his previous report, with two modifications, one of which concerned the survivors' lump-sum benefit. While the Advisory Committee on Administrative and Budgetary Questions recommended action with regard to the emoluments and other conditions of service of the judges of the Tribunal, it also recommended that the consideration of the proposals for a pension scheme and survivors' benefits in respect of the judges of the Tribunal be deferred to the fiftieth session of the General Assembly when it would have considered the Secretary-General's report on the conditions of service of the members of the International Court of Justice.

6. The report of the Secretary-General to the General Assembly at its fifty-second session on the conditions of service of the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/52/520) again contained proposals regarding the pension scheme as well as survivors' benefits. In its consideration of these proposals, however, the Advisory Committee on Administrative and Budgetary Questions concluded that the review of the pension scheme and survivors' benefits should be postponed until the General Assembly had undertaken its comprehensive review of the pension scheme for members of the International Court of Justice at its fifty-third session (see A/52/696, para. 11; and A/52/697, para. 12). The Advisory Committee recommended that pending that review, only a provisional budgetary allocation for pensions and survivors' benefits be provided for. Consequently, no formal action was taken by the General Assembly on the proposal for the adoption of a survivors' benefits at that session.

7. In his report to the General Assembly at its fifty-third session, the Secretary-General made proposals for revised salaries and revised pensions for members of the International Court of Justice, and corresponding revisions to the salaries and pensions of the judges of the International Tribunals in the light of what the Assembly might determine for the members of the International Court of Justice (see A/C.5/53/11). That report did not address the question of the survivors' benefit for judges of the International Tribunals. The General Assembly also had before it the same report of the Secretary-General on the conditions of service for the judges of the two International Tribunals that had been presented to the General Assembly at its fifty-second session (A/52/520). Consequently, no new proposals were presented to the General Assembly regarding the survivors' benefit for judges of the International Tribunals. The Advisory Committee on Administrative and Budgetary Questions, in its review of the proposals contained in documents A/C.5/53/11 and A/52/520, did not specifically deal with the question of a survivors' benefit (see A/53/7/Add.6).

8. In section VIII of its resolution 53/214 of 18 December 1998, the General Assembly approved revisions to the conditions of service and compensation for the members of the International Court of Justice, and at the same time adopted the pension scheme regulations for the judges of both Tribunals. In its resolution, the General Assembly stated that it had considered the report submitted to it by the Secretary-General at its fifty-second session (A/52/520), as well as the recommendations of the Advisory Committee on Administrative and Budgetary Questions contained in related reports submitted to the Assembly at its fifty-first, fifty-second and fifty-third sessions (A/51/7/Add.8 and Corr.1 and 2; A/52/696; A/52/697; and A/53/7/Add.6). However, none

of the above-mentioned reports of the Advisory Committee on Administrative and Budgetary Questions contained recommendations for formal action concerning the adoption of the survivors' lump-sum benefit. The only recommendation made by the Advisory Committee with regard to such benefits concerned the provisional budgetary allocation as recommended at the fifty-second session (see para. 6 above).

9. Consequently, no formal action on the question of survivors' lump-sum benefit for judges of the two International Tribunals has yet been taken by the General Assembly. Accordingly, the Secretary-General believes that it is necessary to take such formal action in order to bring the conditions of service of the judges of the International Tribunals in line with the conditions of service applicable to members of the International Court of Justice, in accordance with the principle, contained in article 12, paragraph 4, of the statute of the International Tribunal for the Former Yugoslavia, that the conditions of service of its judges should be those of the members of the International Court of Justice. Therefore, the Secretary-General proposes that an appropriate survivors' lump-sum benefit be adopted, as described below.

## III. Survivors' lump sum benefit

10. In his report to the General Assembly at its forty-eighth session (A/C.5/48/36), the Secretary-General proposed to literally apply the provisions of the statute of the International Tribunal for the Former Yugoslavia, with the exception of the proposed pension scheme, relocation allowances and the survivors' lump-sum benefit, for which a prorated scale was devised that reflected the different length of the terms of office (i.e., four years for the judges of the International Tribunal, as opposed to nine years for the members of the International Court of Justice). Thus, the proposed minimum benefit was set at the equivalent of one month's salary, while the maximum was set at four months' salary.

11. In his subsequent report to the General Assembly at its forty-ninth session (A/C.5/49/11), the Secretary-General indicated that the judges of the Tribunal were of the view that the proposed survivors' benefit was not fully in line with that of the members of the International Court of Justice, and that the difference in minima could not be justified. The judges had expressed the view that the minimum figure should be equivalent to two months' base salary. The Secretary-General indicated in his report that, should the General Assembly accept the view of the judges of the Tribunal, the Secretary-General would concur with such a modification.

12. A literal application of the terms of the judges of the International Court of Justice (as provided by article 13, paragraph 4, of the statute of the International Tribunal for the Former Yugoslavia) should only be relinquished in cases where this proves to be unfeasible or inappropriate for reasons relating to the difference in the lengths of service of the judges of the International Tribunals on the one hand, and the members of the International Court of Justice on the other.

13. The maximum entitlement for members of the International Court of Justice is equivalent to nine months' salary and is predicated on the term of office of nine years. The minimum entitlement, however, does not appear to bear any relation to the term of office. It is relevant that, whereas the retirement pension requires that judges must have completed at least three years of service, the eligibility for a survivors' benefit is not qualified by a minimum length of service. Moreover, as pointed out by the judges of the International Tribunal for the Former Yugoslavia, judges of the International Tribunal are as likely to die in office as members of the International Court of Justice and survivors' needs will be no less. The duration of the term should not logically affect the minimum figure.

14. Consequently, there may not be any grounds for not following a literal application of article 13, paragraph 4, of the statute of the International Tribunal for the Former Yugoslavia with regard to the minimum benefit for eligible survivors. With regard to the maximum benefit, however, there should be a correlation to the term of office, i.e., four years of service and thus a corresponding maximum benefit equivalent to four months' salary. The proposed survivors' benefit applicable to the judges of the International Tribunals should therefore be subject to the same minimum applicable to the members of the International Court of Justice i.e., three months, but subject to a maximum of four months.

## IV. Conclusions and recommendations

15. The Secretary-General proposes two options for the General Assembly's consideration concerning the establishment of a survivors' benefit for the survivors of the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, as follows:

(a) *Option 1*. In the event of a death of a judge of the Tribunal, survivors are compensated in the form of a lump-

sum payment equivalent to one month of base salary for each year of service, subject to a minimum of one month and a maximum of four months.

(b) *Option 2*. In the event of a death of a judge of the Tribunal, survivors are compensated in the form of a lump-sum payment equivalent to one month of base salary for each year of service, subject to a minimum of three months and a maximum of four months.